

## **2009 DRAFTING REQUEST**

### **Bill**

Received: **01/05/2009**

Received By: **jkreye**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Grinde**

This file may be shown to any legislator: **NO**

Drafter: **jkreye**

May Contact:

Addl. Drafters:

Subject: **Tax, Other - miscellaneous**

Extra Copies:

Submit via email: **NO**

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### **Pre Topic:**

DOA:.....Grinde, BB0314 -

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### **Topic:**

State agency debt collection

---

### **Instructions:**

See attached

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### **Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	jkreye 01/06/2009	kfollett 01/07/2009	phenry 01/07/2009	_____	mbarman 01/07/2009		State
/P2	jkreye 01/20/2009	kfollett 01/20/2009	mduchek 01/20/2009	_____	lparisi 01/20/2009		State
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/P5	jkreye 01/30/2009	kfollett 01/30/2009	phenry 01/30/2009	_____	sbasford 01/30/2009		State

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	jkreye 02/02/2009	kfollett 02/02/2009		_____			
/P6			mduchek 02/02/2009	_____	lparisi 02/02/2009		State
/P7	jkreye 02/02/2009	bkraft 02/02/2009	mduchek 02/02/2009	_____	sbasford 02/02/2009		State
	jkreye 02/16/2009	kfollett 02/16/2009		_____			
/P8			mduchek 02/16/2009	_____	lparisi 02/16/2009		State

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	jkreye	kfollett					
	02/02/2009	02/02/2009					

/P6		/P7 bjk 2/2	mduchek		lparisi		State
			02/02/2009		02/02/2009		

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2/2

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1 P6 k-f  
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MD PH  
2/2

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1P5 k.f  
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*1/28*  
*7/28*  
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See attached

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FE Sent For:

*1P2kf*  
*1/20*  
*MD MDJF*  
*1/20*  
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/P1	jkreye	1 P1/gf 1/7	ph	ph			

FE Sent For:

<END>

## 2009-11 Budget Bill Statutory Language Drafting Request

- Topic: Debt Collection
- Tracking Code: BB0314
- SBO team: Tax, Transportation and Budget Development
- SBO analyst: Kirsten Grinde
  - Phone: 266-1040
  - Email: kirsten.grinde@wisconsin.gov
- Agency acronym: DOR
- Agency number: 566
- Priority (Low, Medium, High): Medium

### Intent:

Authorize the Department of Revenue to serve as the central debt collection agency for state agencies.

This request builds on the existing tax refund intercept authority under s. 71.93. The department would have the authority to pursue and collect amounts past due to any state agency, including the University of Wisconsin. All agencies would be required to enter into written agreements with the department.

The department would have the authority, if part of the written agreement, to handle the initial notification and hearing process regarding the past due payment. Otherwise, the department would have the authority to pursue the amount once it was 90 days past due, unless negotiations between the agency and the debtor are actively ongoing. If the negotiations reach a standstill or fail, the department would take over collection.

The state agencies would retain the authority to pursue any debt that the written agreement places under their purview. For example, the Department of Health Services Medicaid provider would continue to collect Medicaid receivables, but other DHS debts would be referred to the Department of Revenue.

The department would have the authority to use any of its existing collection tools to pursue collection of amounts due, as well as contracting with a private collection agency.

The debtor would be charged for administrative expenses, as under s. 71.93 (5), with the revenues deposited in s. 20.566 (1) (h).



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-1306/P1

JK...

DOA:.....Grinde, BB0314 - State agency debt collection

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

in 1-6-09

Don't Gen

1 AN ACT ...; relating to: the budget.

---

*Analysis by the Legislative Reference Bureau*

**TAXATION**

**OTHER TAXATION**

Under current law, a state agency may certify to DOR a debt owed to the state agency so that DOR can collect the debt by subtracting the debt amount from the debtor's state tax refund. A debt which a state agency may certify to DOR includes an amount that has been reduced to a judgment or an amount for which the state agency has provided the debtor reasonable notice and an opportunity to be heard with regard to that amount. Under current law, DOR charges the debtor an amount to cover DOR's administrative expenses related to offsetting the debt from the debtor's refund.

This bill allows a state agency to enter into <sup>the</sup> a written agreement with DOR to have DOR collect any amount owed to a state agency that is at least 90 days past due, unless negotiations between the agency and debtor are actively ongoing. Under the agreement, DOR, rather than the state agency, may provide the debtor reasonable notice and an opportunity to be heard with regard to the debt. Also, DOR may collect the debt directly from the debtor rather than offset the debt amount from a state tax refund. Under the bill, DOR charges the debtor an amount to cover DOR's administrative expenses related to collecting the debt.

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 71.93 (1) (a) 7. of the statutes is created to read:

71.93 (1) (a) 7. Any amount owed to a state agency and collected pursuant to a written agreement between the department of revenue and the state agency as provided under sub. (8) (b).

**SECTION 2.** 71.93 (8) of the statutes is renumbered 71.93 (8) (b).

**SECTION 3.** 71.93 (8) (b) of the statutes is created to read:

71.93 (8) (b) A state agency and the department of revenue may enter into a written agreement to have the department collect any amount owed to the state agency that is at least 90 days past due, unless negotiations between the agency and debtor are actively ongoing. The written agreement may provide that the department, rather than the state agency, provide the debtor reasonable notice and an opportunity to be heard with regard to the amount owed. The department may collect amounts owed, pursuant to the written agreement, from the debtor rather than offset the amounts as provided under sub. (3). The department shall charge each debtor whose debt is subject to collection under this paragraph an amount for administrative expenses and that amount shall be credited to the appropriation under s. 20.566 (1) (h).

**(END)**



**Kreye, Joseph**


---

**From:** Grinde, Kirsten - DOA [kirsten.grinde@wisconsin.gov]  
**Sent:** Tuesday, January 20, 2009 11:03 AM  
**To:** Kreye, Joseph  
**Subject:** FW: LRB Draft: 09-1306/P1 State agency debt collection  
**Attachments:** 09-1306/P1.pdf

Joe,

The debt collection initiative is modeled after the current Minnesota approach. See their statutes at the following link: <https://www.revisor.leg.state.mn.us/data/revisor/statute/2008/016D/2008-16D.pdf>

The Wisconsin version will have a few differences, such as the 90-day threshold and the ability for DOR to pick up delinquencies and provide the initial contact and hearing/appeal opportunity.

Please make the following modifications to the state agency debt collection draft (LRB 09-1306/P1):

- 1) All state agencies, except the Legislature, the courts and authorities (e.g., WHEDA, WHEFA), will be required to enter into a written agreement with the department to have DOR collect amounts owed to a state agency. Agreements with the courts, Legislature, authorities and local governments should remain voluntary.
  - The required written agreements should be completed by July 1, 2010. The agreements may allow for a delay or phase in of referrals (for example, the agreement could state that the agency will begin referring delinquencies/debts to DOR in January of 2011).
- 2) The secretary of DOR should have the authority to waive the referral of certain types of debt.
- 3) In addition to "negotiations between the agency and debtor [that] are actively ongoing," please add that debts do not need to be referred after 90 days if the debt is the subject of legal action or administrative proceedings, or the agency determines that the debtor is adhering to acceptable payment arrangements.
- 4) A determination by DOR that a debt is uncollectible should not prevent the referring agency from taking additional collection action.

Please let me know if you have any questions or need clarification.

Thanks,

Kirsten

---

**From:** Henry, Patty [mailto:Patty.Henry@legis.wisconsin.gov]  
**Sent:** Wednesday, January 07, 2009 2:18 PM  
**To:** Grinde, Kirsten - DOA  
**Cc:** Hanaman, Cathlene - LEGIS; Beadles, Kathleen - DOA  
**Subject:** LRB Draft: 09-1306/P1 State agency debt collection

*Following is the PDF version of draft 09-1306/P1.*



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-1306/P1

JK:kjf:ph

*PMR*

DOA:.....Grinde, BB0314 - State agency debt collection

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

*in 1-20-09*  
*the debt is the subject of legal action or administrative proceedings or the agency determines that the debtor is adhering to an acceptable payment arrangement*

*Don't Gen*

1 AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

**TAXATION**

**OTHER TAXATION**

*generally frequent*  
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1. Except as provided in mld. 2,

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

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(END)

INSERT  
2-17

**2009-2010 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1306/P2ins  
JK:kjf:ph

**Insert 2 - 10**

1 ~~no~~ , the debt is the subject of legal action or administrative proceedings, or the  
2 agency determines that the debtor is adhering to an acceptable payment  
3 arrangement

**Insert 2 - 17**

- 4 2. The department<sup>✓</sup> may enter into agreements described under subd. 1. with<sup>✓</sup>  
5 the courts, the legislature, authorities, and local units of government.  
6 3. Agreements required under subd. 1. shall be completed no later than July  
7 1, 2010, except that an agreement may allow a delay or phase-in of referrals.  
8 4. The secretary of revenue may waive the referral of certain types of debt. The  
9 department's<sup>✓</sup> determination that a debt is not collectable does not prevent the  
10 referring agency from taking additional collection actions.

**Kreye, Joseph**

---

**From:** Grinde, Kirsten - DOA [kirsten.grinde@wisconsin.gov]

**Sent:** Friday, January 23, 2009 9:49 AM

**To:** Kreye, Joseph

**Subject:** LRB 1306/P2 - debt collection

Joe,

Thanks for making the changes to LRB 1306. One outstanding item is the requirement that agencies enter into the written agreements with DOR (except Legislature, courts, authorities and locals).

The language on page 2, line 8, states that an agency and the department "may enter into" an agreement. On the top of page 3, line 1, states that the "agreements required under subd. 1" be completed by July 1, 2010.

I'm not sure that the structure of s. 71.93 (8) (b) lends itself to replacing "may" with "shall." Would it work better to add another subd. and have subd. 1 describe the agreement; subd. 2 state that, except as provided in subd. 3, all state agencies shall enter into such agreements with the department; subd. 3 would be the current subd. 2 language; current subd. 3 becomes subd. 4; and current subd. 4 becomes subd. 5.?

Let me know if you have any questions.

Thanks,

Kirsten

01/23/2009



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-1306/P2

JK:kjf:md

RMR

DOA:.....Grinde, BB0314 - State agency debt collection

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

in 1-23-09

Don't Gen

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*Analysis by the Legislative Reference Bureau*

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This bill generally requires a state agency to enter into a written agreement with DOR to have DOR collect any amount owed to a state agency that is at least 90 days past due, unless negotiations between the agency and the debtor are actively ongoing, the debt is the subject of legal action or administrative proceedings, or the agency determines that the debtor is adhering to an acceptable payment arrangement. Under the agreement, DOR, rather than the state agency, may provide the debtor reasonable notice and an opportunity to be heard with regard to the debt. Also, DOR may collect the debt directly from the debtor rather than offset the debt amount from a state tax refund. Under the bill, DOR charges the debtor an amount to cover DOR's administrative expenses related to collecting the debt.

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1       **SECTION 1.** 71.93 (1) (a) 7. of the statutes is created to read:

2       71.93 (1) (a) 7. Any amount owed to a state agency and collected pursuant to  
3       a written agreement between the department of revenue and the state agency as  
4       provided under sub. (8) (b).

5       **SECTION 2.** 71.93 (8) of the statutes is renumbered 71.93 (8) (a).

6       **SECTION 3.** 71.93 (8) (b) of the statutes is created to read:

7       71.93 (8) (b) 1. Except as provided in subd. 2., a state agency and the  
8       department of revenue <sup>2</sup>may enter into a written agreement to have the department  
9       collect any amount owed to the state agency that is at least 90 days past due, unless  
10      negotiations between the agency and debtor are actively ongoing, the debt is the  
11      subject of legal action or administrative proceedings, or the agency determines that  
12      the debtor is adhering to an acceptable payment arrangement. The written  
13      agreement may provide that the department, rather than the state agency, provide  
14      the debtor reasonable notice and an opportunity to be heard with regard to the  
15      amount owed. The department may collect amounts owed, pursuant to the written  
16      agreement, from the debtor rather than offset the amounts as provided under sub.  
17      (3). The department shall charge each debtor whose debt is subject to collection  
18      under this paragraph an amount for administrative expenses and that amount shall  
19      be credited to the appropriation under s. 20.566 (1) (h).

20      2. The department may enter into agreements described under subd. 1. with  
21      the courts, the legislature, authorities, and local units of government.

1           3. Agreements required under subd. 1. shall be completed no later than July  
2           1, 2010, except that an agreement may allow a delay or phase-in of referrals.

3           4. The secretary of revenue may waive the referral of certain types of debt. The  
4           department's determination that a debt is not collectable does not prevent the  
5           referring agency from taking additional collection actions.

6 (END)



**Kreye, Joseph**

**From:** Grinde, Kirsten - DOA [kirsten.grinde@wisconsin.gov]  
**Sent:** Wednesday, January 28, 2009 11:15 AM  
**To:** Kreye, Joseph  
**Subject:** FW: LRB Draft: 09-1306/P3 State agency debt collection  
**Attachments:** 09-1306/P3.pdf

Joe,

Please see the comments from Diane Hardt below. Please note that I have crossed off her third comment. The decision of the Governor is to include that authority.

In relation to her fourth comment, please modify the draft to ensure that the department does not pursue refund offset, referral to a private collection agency or other current offset collection approaches until, as under current law, the person owing the amount has had sufficient notice and a chance to be heard.

For her fifth comment, please include a 30-day notice requirement either by the agency or DOR (if acting as the initial contact) that the amount will be pursued as a debt – i.e., using tax refund intercept, vendor payment intercept, referral to a private collection agency, or other collection tools.

Please let me know if you have any questions.

Thanks,

Kirsten

---

**From:** Hardt, Diane L - DOR  
**Sent:** Friday, January 23, 2009 6:15 PM  
**To:** Grinde, Kirsten - DOA; Templeton, Carrie E - DOR; Wink, Wendy L - DOR  
**Subject:** FW: LRB Draft: 09-1306/P3 State agency debt collection

Kirsten:

We have a lot of comments. I'll be available by blackberry all weekend: 608-338-9811.

- 1 Create 71.93(8)(c) The department may collect tax and non-tax debts referred from other agencies in the same manner as tax debts are collected, as provided in secs. 71.91, 71.92, and 73.03(20), Wis. Stats. (We need to be able to use tax collection tools. Many of the current statutes are TAX-specific: 71.87(7); 71.91(6), etc)
- 2 Allow employees discharging their duties to collect other agency debts to use tax return and related information. There should be no violation of secs. 71.78, 72.06, 77.61(5), 78.80(3), and 139.38(6), Wis. Stats., by using tax return information. See similar language in sec. 71.93(7).
- 3 ~~Eliminate lines 13-15 which reads: "The written agreement may provide that the department, rather than the state agency, provide the debtor reasonable notice and an opportunity to be heard with regard to the amount owed." It's important that all debts are final and all appeal rights have expired before a debt is referred to the department as is the case with setoffs. We won't have the business knowledge to conduct hearings.~~
- 4 Page 2, line 4, add to the end of the sentence "provided the debt has been reduced to a judgment or if the state agency has provided the debtor reasonable notice and an opportunity to be heard with regard to the amount owed." This is comparable to language for setoffs for state agencies in 71.93 and municipalities and counties in 71.935.
- 5 Page 2, line 13, insert: "At least 30 days prior to referral of debt to the department, the agency shall provide the debtor with written notice that the debt will be referred to the department for collection." This is comparable to setoffs in sec. 71.93(2).

01/28/2009

Page 2, line 16: Delete the words "rather than offset" and insert the words "in addition to offsetting", so the department may offset refunds as well as take collection actions.

Page 2, line 17, add a new sentence after (3). "If the debtor owes both tax debt to the department and debt to other state agencies, payments will first apply to tax debts owed to the department, and then to debts owed to agencies in the order of debt referral to the department." If the courts, legislature, authorities and local units of government refer debts, their debts will be prioritized after state agency debts.

Expand sec. 806.11 to allow the department to file a warrant with the clerk of courts for debts referred from other agencies.

Amend sec. 71.93(3)(a). Delete the first sentence and "If the debt remains uncollected." We will require agencies to keep their debts current at all times for setoffs and other collection actions so we don't have to check with them before taking collection action.

Diane Hardt

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**From:** Templeton, Carrie E - DOR  
**Sent:** Friday, January 23, 2009 1:56 PM  
**To:** Hardt, Diane L - DOR  
**Cc:** Wink, Wendy L - DOR  
**Subject:** FW: LRB Draft: 09-1306/P3 State agency debt collection

Hi Diane

We were sent a revised version of the draft. Can you please review? Thanks  
Carrie

*Carrie Templeton*  
*Wisconsin Department of Revenue*  
*(608) 266-6466*  
*carrie.templeton@revenue.wi.gov*

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**From:** Grinde, Kirsten - DOA  
**Sent:** Friday, January 23, 2009 12:07 PM  
**To:** Templeton, Carrie E - DOR; Wink, Wendy L - DOR  
**Subject:** FW: LRB Draft: 09-1306/P3 State agency debt collection

FYI.

Do you think the language works to require all agencies to enter into agreements with DOR?

Thanks,

Kirsten

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**From:** Henry, Patty [mailto:Patty.Henry@legis.wisconsin.gov]  
**Sent:** Friday, January 23, 2009 11:55 AM  
**To:** Grinde, Kirsten - DOA  
**Cc:** Hanaman, Cathlene - LEGIS; Beadles, Kathleen - DOA

01/28/2009

**Subject:** LRB Draft: 09-1306/P3 State agency debt collection

*Following is the PDF version of draft 09-1306/P3.*



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-1306/P3

JK:kjf:ph

RMR

DOA:.....Grinde, BB0314 - State agency debt collection

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

in 1-28-09

Don't Gen

1 AN ACT ...; relating to: the budget.

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*Analysis by the Legislative Reference Bureau*

**TAXATION**

**OTHER TAXATION**

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3           a written agreement between the department of revenue and the state agency as  
4           provided under sub. (8) (b). INSERT 2-4A

5           **SECTION 2.** 71.93 (8) of the statutes is renumbered 71.93 (8) (a).  
INSERT  
2-4B

6           **SECTION 3.** 71.93 (8) (b) of the statutes is created to read:

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10          negotiations between the agency and debtor are actively ongoing, the debt is the  
11          subject of legal action or administrative proceedings, or the agency determines that  
12          the debtor is adhering to an acceptable payment arrangement. INSERT  
2-12

13          The written  
14          agreement may provide that the department, rather than the state agency, provide  
15          the debtor reasonable notice and an opportunity to be heard with regard to the  
16          amount owed. The department may collect amounts owed, pursuant to the written  
17          agreement, from the debtor rather than offset the amounts as provided under sub.

18          (3). The department shall charge each debtor whose debt is subject to collection  
19          under this paragraph an amount for administrative expenses and that amount shall  
20          be credited to the appropriation under s. 20.566 (1) (h). INSERT 2-21

21          2. The department may enter into agreements described under subd. 1. with  
            the courts, the legislature, authorities, and local units of government.

*in addition to offsetting*

INSERT  
2-17

3. Agreements required under subd. 1. shall be completed no later than July 1, 2010, except that an agreement may allow a delay or phase-in of referrals.

3           4. The secretary of revenue may waive the referral of certain types of debt. The  
4       department's determination that a debt is not collectable does not prevent the  
5       referring agency from taking additional collection actions.

**(END)**

6

INZER

3-5

**2009-2010 DRAFTING INSERT**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1306/P4ins  
JK:kjf:ph

**Insert 2 - 4A**

1     *no ff* , if the debt has been reduced to a judgment or if the state agency or the  
2     department has provided the debtor reasonable notice and an opportunity to be  
3     heard with regard to the amount owed

**Insert 2 - 4B**

4     **SECTION 1.** 71.93 (3) (a) of the statutes is amended to read:  
5     71.93 (3) (a) ~~In administering this section the department shall first check with~~  
6     ~~the state agency certifying the debt to determine whether the debt has been collected~~  
7     ~~by other means. If the debt remains uncollected the~~ The department of revenue shall  
8     setoff any debt or other amount owed to the department, regardless of the origin of  
9     the debt or of the amount, its nature or its date. If after the setoff there remains a  
10    refund in excess of \$10, the department shall set off the remaining refund against  
11    certified debts of other state agencies. If more than one certified debt exists for any  
12    debtor, the refund shall be first set off against the earliest debt certified, except that  
13    no child support or spousal support obligation submitted by an agency of another  
14    state may be set off until all debts owed to and certified by state agencies of this state  
15    have been set off. When all debts have been satisfied, any remaining refund shall  
16    be refunded to the debtor by the department. Any legal action contesting a setoff  
17    under this paragraph shall be brought against the state agency that certified the  
18    debt under sub. (2).

**History:** 1987 a. 312; 1989 a. 31; 1993 a. 437; 1995 a. 27 ss. 3427 to 3429, 9126 (19), 9130 (4); 1995 a. 404; 1997 a. 3, 27; 2001 a. 16; 2003 a. 33; 2005 a. 25, 59, 254; 2007 a. 20 ss. 2141 to 2142, 9121 (6) (a); 2007 a. 97, 200.

**Insert 2 - 12**

19    *no ff* At least 30 days before the department pursues the collection of any debt  
20    referred by a state agency, either the department or the agency shall provide the

1 debtor with a written notice that the debt will be referred to the department for  
2 collection.

**Insert 2 - 17**

3 *not* If the debtor owes tax debt to the department and debt to other state agencies,  
4 payments shall first apply to tax debts owed to the department and then to debts  
5 owed to the state agencies, in the order in which the debts were referred to the  
6 department.

**Insert 2 - 21**

7 *not* Payments received by a debtor pursuant to an agreement under this  
8 subdivision shall first apply to any tax debts owed to the department, and then to any  
9 debts owed to the state agencies, before being applied to debts owed to the courts, the  
10 legislature, authorities or local units of government.

**Insert 3 - 5**

11 5. The department may collect debts under this paragraph in the same  
12 manner that it collects taxes under ss. 71.91, 71.92, and 73.03 (20). The department's  
13 use of tax returns and related information to collect debts under this paragraph is  
14 not a violation of s. 71.78, 72.06, 77.61 (5), 78.80 (3), or 139.38 (6).

15 **SECTION 2.** 806.11 (1) (intro.) of the statutes is amended to read:

16 806.11 (1) (intro.) At the time of filing the warrant provided by s. 71.74 (14) ~~or~~,  
17 71.91 (5), or 71.93 (8) (b) 5., the clerk of circuit court shall enter the warrant in the  
18 judgment and lien docket, including:

19 History: Sup. Ct. Order, 67 Wis. 2d 585, 730 (1975); 1975 c. 218; 1985 a. 145; 1987 a. 312 s. 17; 1991 a. 39; 1995 a. 224.

**SECTION 3.** 806.11 (2) of the statutes is amended to read:

20 806.11 (2) If a warrant provided by s. 71.74 (14) ~~or~~, 71.91 (5), or 71.93 (8) (b) 5.  
21 is against several persons, the warrant shall be entered, in accordance with the



- 1 procedure under sub. (1), in the judgment and lien docket under the name of each
- 2 person against whom the warrant was issued.

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 730 (1975); 1975 c. 218; 1985 a. 145; 1987 a. 312 s. 17; 1991 a. 39; 1995 a. 224.